IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

:: O R D E R ::

Jamak Lal **Vs.** **Ajay Kumar Podwal & Anr.**

S.B. CIVIL WRIT PETITION NO.800/2006.

Date of Order :: 18.04.2006

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. M.R. Singhvi, for the petitioner.
Mr. Arun Bhansali, for the caveator.

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BY THE COURT:

The petitioner Jamak Lal, respondent in election petition No.1/2005 pending in the court of Additional District Judge No.1, Udaipur, has preferred this writ petition challenging the orders dated 30.01.2006 (Annex.7 & 8) rejecting two applications submitted by the petitioner respectively under Sections 34 and 35 of the Rajasthan Municipalities Act, 1959 read with Order 7 Rule 11 of the Code of Civil Procedure and under Section 41 (1) of the Rajasthan Municipalities Act, 1959

('the Act') read with Order 7 Rule 11 of the Code of Civil Procedure (CPC).

Brief facts relevant for determination of the questions involved in this writ petition are that the respondent Ajay Kumar (referred herein as election petitioner) has submitted an election petition under Section 36 of the Act questioning election of the petitioner Jamak Lal as Member of Ward No.43 of the Municipal Council, Udaipur in the elections held on 24/25.11.2004. The election petition has been submitted on various grounds as stated in Para 5 of the election petition, including the grounds of improper refusal to 47 voters to cast their votes for their names being found in the electoral rolls of Ward No.43 as well as Ward No.50; and of improper reception of bogus votes. The election petitioner has also alleged in the election petition that on his conference with the Returning Officer on 18.12.2004 he had admitted depriving the voters from casting their votes in Ward No.43 at the instructions of the Zonal Magistrate; and such dialogue between the election petitioner and the said Presiding Officer was tape-recorded and the transcription of such recording has been annexed with the election petition as Annexure-36 whereas the audio cassette containing such record has been annexed with the election petition as Annexure-37.

The present petitioner moved two applications aforesaid with the submissions in the first application (Annex.3) that the grounds stated in the election petition do not make out any cause of action for maintaining the petition and the grounds as stated in Para 5 of the election petition do not answer to any of the grounds envisaged by Section 34 and 35 of the Act on which the election of the petitioner could be called in question. This application was replied by the election petitioner with the submissions that refusing to receive valid votes and so also permitting bogus polling remain material grounds; and the Officer concerned having accepted such acts has also been stated in the election petition; and the petition was, therefore, competent.

It appears that in relation to the audio cassette, the petitioner submitted two applications. Earlier an application was submitted on 05.04.2005 (Annex.5 at page 41) with the submissions that the audio cassette has been annexed with the petition as Annexure-37 and the election petitioner has only supplied the transcription of the alleged contents of the cassette as Annexure-36, but the reliability and correctness of such transcription could be examined only on receiving a copy of the cassette; and as to whether the cassette was intact in its original condition and whether it had been edited/altered or not could also be examined only on receiving a copy of Annexure-

37 and, therefore, it was prayed that a true copy of Annexure-37 be got delivered from the election petitioner. This application was replied by the election petitioner with the submissions that the original cassette has already been submitted to the court and transcription has been supplied; it was also contended that the correctness of the cassette was a question of evidence and at the proper stage relevant objections could be raised. Thereafter the present application was moved by the petitioner (at page 43 of Annex.5) that the election petitioner has admitted in reply to the application dated 05.04.2005 that copy of cassette was not supplied and in view of the provisions of 41(1) of the Act, the documents annexed to the petition were required to be supplied and for the petitioner failing to supply the same, the petition was required to be rejected. This application was replied by the election petitioner with the submissions that the cassette was not the basis of the petition and transcription having already been supplied, petition could not be rejected. However, it was submitted that the election petitioner has already submitted original cassette before the court and the court in its supervision may supply a copy of the cassette to the respondent and petitioner.

Learned Additional District Judge No.1, Udaipur has proceeded to reject both the applications aforesaid by two

separate orders dated 30.01.2006 (Annex.7 & 8) sought to be assailed in this writ petition. Learned Judge was of opinion that the petition discloses specifically the grounds of improper refusal of votes relatable to Clause d (iii) of Section 34 of the Act and, therefore, the election petition was not liable to be rejected. On the other application for supplying of a copy of the cassette, learned Judge referred to the decision of the Hon'ble Supreme Court in the case of U.S. Shashidharan Vs. K. Karunakaran & Ors. : (1989) 4 SCC 482 and observed when a fact is referred only by way of evidence, copy was not required to be supplied. Learned Judge was of opinion that in the present case supplying of copy of audio cassette was not necessary particularly when its transcription had already been supplied.

Having heard learned counsel for the parties and having perused the material placed on record, this Court is clearly of opinion that though the applications submitted by the petitioner have rightly been rejected by the learned Additional District Judge No.1, Udaipur, however, in view of the pleadings taken in the election petition and the subject matter of dispute and the submissions made by the election petitioner himself before the court, it shall be in the interest of justice that a copy of the audio cassette available before the court be supplied each to the petitioner and respondent.

So far the application seeking rejection of the election petition for want of cause of action is concerned, the said application was fundamentally baseless. The election petition does disclose the cause of action and is based on material grounds directly referable to Clause (d) of Section 34 of the Act particularly about improper refusal and so also improper receiving of substantial number of votes likely to have a material bearing on the result. The learned Judge has rightly rejected the baseless application by the order Annexure-7.

So far the audio cassette is concerned, the election petitioner has specifically stated that no copies were prepared and the original was submitted to the court and a transcription has also been annexed with the petition and supplied to the present petitioner. It is moreover clear that the contents of such cassette have not been made the basis of any of the grounds in the election petition and have only been referred as so-called confirmation of facts by the Election Officer in private conversation. Without commenting on any other aspect relating to the said cassette including relevance, reliability,and admissibility in evidence, this Court is of opinion that though the election petition could not have been rejected for not supplying of a copy of such cassette, but it would have certainly served the cause of justice if copies were permitted

to be prepared in the supervision of the court and delivered to both the parties to enable them to make their submissions effectively and completely before the court. The election petitioner himself has made such a suggestion before the Court and such course could have been adopted without causing prejudice to either of the parties. Therefore, while rejection of the application submitted by the petition deserves to be upheld, preparation and supplying of the copies of the audio cassette deserves to be ordered.

In view of the aforesaid, this writ petition is dismissed and the impugned orders Annex.7 & 8 are affirmed, however, with the clarification that in the interest of justice, in the supervision of the court concerned; and at the costs of the election petitioner, two copies of the audio cassette available with the court shall be permitted to be made and a copy each shall be supplied to the petitioner and respondent. There shall be no order as to costs of this writ petition.

(DINESH MAHESHWARI) , J.

Mohan